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OFFICE OF PETITIONS

In re Patent of Knut Adermann et al.	:	DECISION ON REQUEST
Patent No. 7,655,629	:	FOR RECONSIDERATION OF
Issue Date: February 2, 2010	:	PATENT TERM ADJUSTMENT
Application No. 10/539,627	:	AND NOTICE OF INTENT TO
Filing Date: September 19, 2005	:	ISSUE CERTIFICATE OF
Attorney Docket No. P70650US0	:	CORRECTION

This is a decision addressing the request filed June 7, 2010. Patentees request the patent term adjustment indicated on the patent be corrected to indicate the term of the patent is extended or adjusted by seven hundred and six (706) days.

The petition to correct the patent term adjustment indicated on the patent to indicate the term of the patent is extended or adjusted by seven hundred and six (706) days is **GRANTED to the extent indicated herein.**

The Office will *sua sponte* issue a certificate of correction setting forth a patent term adjustment determination of 523 days. Pursuant to 37 C.F.R. § 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Therefore, Patentees are hereby given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to file any response to this decision. No extensions of time will be granted under 37 C.F.R. § 1.136.

No portion of this decision should be construed as a waiver of the requirement, set forth in 35 U.S.C. § 154(b)(4), that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. § 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office issued Patent No. 7,655,629 on February 2, 2010. The patent set forth a patent term adjustment determination of 500 days.

A "Request for Recalculation of Patent Term Adjustment in View of *Wyeth*" was filed May 4, 2010.

On May 13, 2010, the Office issued a decision in response to the May 4, 2010 request. The decision stated the Office would be issuing a certificate of correction indicating the term of the patent is extended or adjusted by 450 days unless a request for reconsideration of the decision was filed within the longer of one month or 30 days from the issuance date of the decision.

The instant request for reconsideration was filed June 7, 2010. The request asserts the 450-day patent term adjustment determination is incorrect as a result of the Office improperly determining the number of days consumed by appellate review.

A certificate of correction indicating the term of the patent is extended or adjusted by 450 days was issued November 23, 2010.

Delay Under 37 C.F.R. § 1.703(a) (“A Delay”)

The period of A Delay is not in dispute.

The period of A Delay includes:

1. A 106-day period of delay under 37 C.F.R. § 1.703(a)(1),
2. A 14-day period of delay under 37 C.F.R. § 1.703(a)(2), and
3. A 271-day period of delay under 37 C.F.R. § 1.703(a)(3).

The total period of A Delay is 391 days.

Delay Under 37 C.F.R. § 1.703(b) (“B Delay”)

The number of days beginning June 21, 2008, the day after the date three years after the national stage commenced, and ending on February 2, 2010, the date the patent issued, is 530 days. However, the period of B Delay is not 530 days.

Pursuant to 37 C.F.R. § 1.703(b)(4), the period of B Delay does not include any time consumed by appellate review.

Patentees assert the period of time consumed by appellate review is 35 days.

The Office agrees the period of time consumed by appellate review is 35 days. In other words, the period of B Delay is 495 days.

Overlap Between the Period of A Delay and the Period of B Delay

The instant request does not include any discussion of the fact the periods of A Delay and B Delay overlap.

The total period of Office delay in this case is the sum of the period of A Delay and B Delay to the extent the periods do not overlap. *See* 37 C.F.R. § 1.703(f).

A review of the record indicates the 271-day period of A delay under 37 C.F.R. § 1.703(a)(3) overlaps with 271 days of the period of B Delay. In other words, the periods of A Delay and B Delay overlap by 271 days.

Delay Under 37 C.F.R. § 1.704 ("Applicant Delay")

The period of Applicant Delay is 92 days and is not in dispute.

Conclusion

The total period of A Delay is 391 days.

The period of B Delay is 495 days.

The periods of A Delay and B Delay overlap by 271 days.

The period of Applicant Delay is 92 days.

The patent term adjustment is 523 days, which is the sum of 391 days of A Delay and 495 days of B Delay reduced by 271 days of overlap between the periods of A Delay and B Delay and reduced by 92 days of Applicant Delay.

The Office acknowledges submission of the \$200.00 fee set forth in 37 C.F.R. § 1.18(e). Patentees request the \$200.00 fee be refunded. However, the fee is required for the Office to reconsider a patent term adjustment determination set forth in a decision issued in response to a "Request for Recalculation of Patent Term Adjustment in View of *Wyeth*." Therefore, the fee will not be refunded.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the patent is extended or adjusted by **five hundred twenty-three (523) days**.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 7,655,629 B2
APPLICATION NO. : 10/539,627
DATED : February 2, 2010
INVENTOR(S) : Knut Adermann et al.

DRAFT

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the Title Page:

The first or sole Notice should read --

Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 523 days.